

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Allowing Earlier Equipment Marketing and)	ET Docket No. 20-382
Importation Opportunities)	
)	
Petition to Expand Marketing Opportunities for)	RM-11857
Innovative Technologies)	

COMMENTS OF SAMSUNG ELECTRONICS AMERICA, INC.

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Samsung Electronics America, Inc. (“Samsung”) submits these comments in response to the above-captioned *Notice of Proposed Rulemaking* (“*Notice*”).¹ Samsung applauds the commitment of the Federal Communications Commission (“Commission”) to ensuring U.S. consumers have access to cutting-edge wireless technology in a safe and transparent manner. Samsung shares this commitment and therefore encourages the adoption of updates outlined in the *Notice* that will enable Samsung to serve U.S. consumers in a more efficient manner going forward.

I. INTRODUCTION AND SUMMARY.

For decades, the Commission has played a key role in facilitating the development and rollout of innovative radiofrequency (“RF”) devices. These devices and the technologies they enable have supported myriad new and previously unforeseen business models and use cases and

¹ *Allowing Earlier Equipment Marketing and Importation Opportunities; Petition to Expand Marketing Opportunities for Innovative Technologies*, Notice of Proposed Rulemaking, 35 FCC Rcd 14458 (2020) (“*Notice*”).

have empowered consumers with tools to enhance their everyday lives. Samsung is at the heart of this effort, providing products that span the entirety of the fifth-generation wireless (“5G”) ecosystem.² Over the past two years, Samsung has partnered with leading mobile operators to bring 5G technology to consumers, releasing advanced 5G models of Samsung’s Galaxy S-series devices, which offer enhanced displays, more sophisticated cameras, and latest security innovations.³ Samsung has also expanded 5G availability into its lower-priced mid-range devices, such as the Galaxy A-series, making 5G affordable for more U.S. consumers. Samsung has sought to ensure a stable supply of 5G products and services amid the global COVID-19 pandemic, including responding to consumer demand for increased data speed capability at price points that prioritize core features.⁴

As the Commission has recognized, deploying 5G technology and realizing the vast capabilities associated with it will reap enduring dividends for the nation. Nearly a year into the pandemic, the need for – and impact of – 5G could not be clearer. As Acting Chairwoman Jessica Rosenworcel has explained, the Commission’s mission of connecting all Americans to advanced communications capabilities is an essential part of the nation’s pandemic response.⁵

² See Comments of Samsung Electronics America, Inc., RM-11857, at 2-4 (Jul. 9, 2020).

³ See “[Video] Samsung Executive Daniel (Gail-Joon) Ahn Outlines the Latest Security Innovation Keeping the Galaxy S21 Series Protected, Samsung Knox Vault,” Samsung Newsroom (Feb. 10, 2021), <https://news.samsung.com/global/video-samsung-executive-daniel-gail-joon-ahn-outlines-the-latest-security-innovation-keeping-the-galaxy-s21-series-protected-samsung-knox-vault>.

⁴ For example, in September 2020, Samsung released the Galaxy S20 FE, “Unveiling Samsung Galaxy S20 FE: Fan Favorite Features at an Accessible Price Point,” Samsung Newsroom (Sept. 23, 2020), <https://news.samsung.com/global/unveiling-samsung-galaxy-s20-fe-fan-favorite-features-at-an-accessible-price-point>.

⁵ Statement of F.C.C. Commissioner Jessica Rosenworcel Before the Subcommittee on Communications & Technology Committee on Energy and Commerce, U.S House of

Likewise, Commissioner Brendan Carr has noted that the rapid shift to remote work and life has made connectivity more important than ever.⁶ As a vital part of the communications ecosystem, the 5G consumer devices Samsung and others produce help to ensure Americans can connect to the content, services, and people essential to their daily personal and professional lives.

Samsung therefore appreciates that the Commission has recognized in the *Notice* the pressing need to update the Commission's marketing and importation rules to reflect current consumer expectations in the marketplace, matched with appropriate safeguards to protect consumers and to ensure unauthorized devices do not reach users. Modernizing these rules will yield significant benefits to consumers and increase efficiency in getting the world's most advanced products into the hands of American consumers.

Specifically, Samsung urges the Commission to adopt its proposals to create a new importation condition to allow for pre-market activities, with slight modifications. Samsung and other manufacturers that release innovative consumer products throughout the year must invest considerable time and effort to prepare devices for retail store display and sale; the Commission's new condition will significantly help streamline this process. When launching new devices, Samsung always strives to ensure a smooth and quick process for consumers who wish to obtain them. However, manufacturers are currently constrained in meeting this goal because much of the activity necessary to ready devices for rollout takes place inside the U.S. after importation, which currently cannot occur until completion of the authorization process. As a result, companies must wait for completion of the authorization process before importing

Representatives, at 1 (Sept. 17, 2020), <https://docs.fcc.gov/public/attachments/DOC-366984A1.pdf>.

⁶ Statement of F.C.C. Commissioner Brendan Carr Before the Senate Commerce, Science, and Transportation Committee, at 1 (Jun. 24, 2020), <https://docs.fcc.gov/public/attachments/DOC-365159A1.pdf>.

devices to ready them for distribution and eventual sale. The proposal outlined in the *Notice* would help remedy this challenge and expedite consumers' ability to obtain new devices once authorized by allowing a manufacturer to import a certain number of devices prior to authorization for the purpose of performing these pre-marketing activities. Importantly, the device limit must be high enough for the manufacturer to accomplish these pre-marketing activities in the U.S. and to distribute the devices to retail stores so that they can be made accessible to consumers as soon as authorization is obtained.

Samsung also supports the Commission's proposal to permit direct pre-sales to consumers. The mobile device marketplace is consumer-driven, and expanding the scope of acceptable marketing activities will enable manufacturers to better gauge interest in new product offerings and to better serve their customers. As described in the *Notice*, any potential consumer harms from such expanded marketing activities can be adequately mitigated and addressed by requiring that manufacturers wait to ship devices directly to consumers until after they receive authorization.

As explained below, these modifications to the Commission's equipment authorization rules would materially reduce manufacturers' time-to-market cycles, enable manufacturers to be nimbler in responding to consumer demand, and limit the Commission's administrative burden while maintaining the safeguards necessary to inform consumers and protect public safety.

II. ACTING EXPEDITIOUSLY TO EXPAND THE COMMISSION'S IMPORTATION RULES WILL BENEFIT CONSUMERS, FOSTER INNOVATION, AND REDUCE WASTE.

Adopting a new condition to allow manufacturers to import a reasonable number of devices for pre-marketing activities would benefit consumers by fostering innovation and bringing devices to market more quickly. "Manufacturer" in the context of this new importation condition should be broadly construed to include affiliates and related corporate entities that

participate in this process too. To achieve this, however, the Commission must adopt a device limit for importation that is more commensurate with the quantity that manufacturers need at the time of a new-device launch. Samsung's experience, as well as public estimates of the sheer number of U.S. retail stores, indicate that the amount needed is higher than the 4,000-device limit proposed in the *Notice*.

A. Importing Devices for Pre-Marketing Activities Would Speed Introduction of Authorized Devices to Consumers.

As a global leader in 5G technology, Samsung releases innovative consumer products throughout the year, including smartphones that are displayed in retail stores across the country for consumers to experience in person prior to purchase. For highly anticipated, in-demand products, Samsung invests considerable time and effort to prepare devices to make them physically available in stores to ensure consumers can actually experience and evaluate them. This requires significant processing time in the U.S. and then additional time distributing devices to U.S. retail partners.

Under the Commission's existing rules, much of the activity necessary to ready devices for rollout to stores must wait until after equipment has been fully authorized, which increases the amount of time required to bring new devices to market. Because much of this activity occurs in the U.S., these import restrictions cause timing delays that burden Samsung and its retail partners, who must first wait for authorization to import before even starting to ready the devices for shipment, thus building in an unnecessary delay before shipping devices to retail stores for sale. The tasks required to ready devices after importation are significant – much of the software flashing and carrier-specific customization must take place in the U.S. to ensure the most up-to-date software possible before distribution. In addition, to reduce the likelihood of waste and to meet some carrier requirements, Samsung packages its smartphones in the U.S. so

that boxes and materials can be ordered closer to the final rollout date, since marketing collateral, regulatory information, or other items required for packaging and in-box materials often change as the device goes to testing and then production.⁷ Packaging the devices prior to importation increases the likelihood that the devices will have to be repackaged after they arrive. Further, if the Commission’s equipment authorization process is unexpectedly delayed (by government shutdowns, pandemics, or other events over which manufacturers have no control), entire marketing and rollout campaigns can be delayed or destroyed, threatening the success of a product for easily avoidable reasons.⁸

Under the new importation condition, consumers must still wait to receive pre-ordered devices or physically interact with them in stores until after Commission authorization. However, as manufacturers use the new condition to shorten the window between product development and delivery, consumers will be able to obtain access to authorized devices sooner than they would have under the current rules, which is a consumer benefit. This pre-authorization importation would allow Samsung to conduct all necessary pre-marketing activities and distribute devices to retail partners to hold at the ready.⁹ Then, upon authorization, and only upon authorization, retailers could then promptly display and demonstrate the devices for

⁷ For example, a carrier may want phones with their brand to be packaged with the carrier’s SIM card in or with the phone. In addition, Samsung may not receive a specific Hearing Aid Compatibility rating early enough to permit printing of packaging and in-box material prior to importation.

⁸ For example, lapses of federal funding in 2018 and 2019 led to significant suspensions in the Commission’s systems including the ability to receive and process applications and issue grants of certification. *See e.g.* “Impact of Potential Lapse in Funding on Commission Operations,” Public Notice, DA 19-10, at 1, n. 2 (rel. Jan. 2, 2019) <https://docs.fcc.gov/public/attachments/DA-19-10A1.pdf>.

⁹ The *Notice* proposes to define pre-sale activity to include “packaging and delivering devices to retails [sic] locations, as well as loading devices with specific software to demonstrate specific features of the devices when displayed at retail locations.” *Notice* at App. A, § 2.1204 (a)(11). Samsung supports this definition as sufficiently inclusive of necessary pre-sale activity.

consumers. This process will enable retailers to put the best available technology into the hands of American consumers more quickly and to facilitate a well-coordinated nationwide launch in markets large and small, urban and rural. More immediate access to the latest devices will help put consumers in the best position to take advantage of 5G and next generation wireless technology and to meet the challenges of today's connected environment with the cutting-edge security in Samsung's latest devices.

B. Samsung's Experience Indicates that a Higher Device Limit is Appropriate.

In Samsung's experience, during a typical flagship launch, the proposed 4,000 device threshold would be insufficient to provide even one device to each retail store located in the United States. As of this filing, according to public estimates, there are at least 15,000 carrier stores and at least 8,000 "big box" retail stores in the U.S. where Samsung devices are sold and thus potentially eligible to participate in an initial wireless device launch.¹⁰ Likewise, other commenters agree that an importation limit of 4,000 is insufficient to meet the pace of innovation and consumer demand for new technology.¹¹ To prevent the immediate and frequent need for waiver, the Commission should consider a device limit more in line with actual need based on the number of retail stores, and in any event no fewer than 12,000. Increasing the device limit

¹⁰ See, e.g., AT&T, *5662 AT&T stores in the U.S.* (last visited Feb. 5, 2021) <https://www.att.com/stores/us#:~:text=5660%20AT%26T%20stores%20in%20the%20U.S> (5,662 stores); Sprint/T-Mobile, *Hey, Sprint Customer – You're Gonna Love Our New Look!* (last visited Feb. 5, 2021) <https://www.sprint.com/en/landings/welcome-to-your-new-experience?amp=1> (at least 7,500 stores); Verizon, *Verizon fact sheet*, (last visited Feb. 5, 2021) <https://www.verizon.com/about/our-company/verizon-fact-sheet> (more than 1,600 stores); Xfinity, *All Xfinity Stores & Comcast Service Centers*, (last visited Feb. 5, 2021) <https://www.xfinity.com/local/index.html> (522 stores); National Retail Federation, *Top 100 Retailers 2020 List*, (last visited Feb. 5, 2021) <https://nrf.com/resources/top-retailers/top-100-retailers/top-100-retailers-2020-list> (Walmart: 5,355 stores; Target: 1,868 stores; Best Buy: 995 stores; Costco: 542 stores).

¹¹ Notice ¶ 41.

would increase the likelihood that devices will be more evenly distributed to retail locations in the U.S. upon launch, to both urban and rural areas.

Although a waiver process for exceeding the device importation limit would help alleviate some of the strain, Samsung anticipates that with a 4,000-device limit, it would need such a waiver for nearly every smartphone it sells. However, a higher limit of at least 12,000 would reduce the number of waivers needed each year, likely to several models of best-selling devices.

C. Safeguards Proposed in the *Notice* Will Ensure Devices Receive Authorization Before Reaching Consumers.

The proposed safeguards in the *Notice* will ensure that only authorized devices reach consumers, including through appropriate labeling requirements, legal and contractual protections, and by requiring manufacturers to reasonably believe that authorization is forthcoming in order to utilize the importation condition. Further, manufacturers' current recordkeeping practices will provide the Commission with information reasonably necessary to enforce the condition such as applicable device testing records, importation records, and distribution records.

Labeling. By requiring device packaging to display temporary labels indicating that the device cannot be displayed or released to consumers prior to authorization, manufacturers will provide sufficient notice that the device is not authorized for marketing or operation.¹² This temporary label could also be used to obscure a device's FCC ID until it has been authorized.¹³ In exercising the new importation condition, devices should be physically imprinted with their

¹² *Id.* at ¶¶ 45-46.

¹³ *Id.* at ¶ 53. 47 C.F.R. § 2.926(e) should be amended as a conforming edit to permit an obscured permanent FCC ID on a device prior to authorization.

FCC ID or have their FCC ID embedded in software used for e-labeling to ensure the labeling is accurate. A temporary label on packaging could provide notice during the import process prior to final authorization, but retailers should not need to open packaging to remove such a label. Further, the Commission should clearly communicate with customs officials that these imports are permissible, similar to the process the Commission uses for other parts of § 2.1204 that permit importation for the purpose of device testing and evaluation.¹⁴

Legal and Contractual Protections. Requiring manufacturers to retain legal ownership of the device will incentivize manufacturers to ensure that retailers and other partners abide by the labeling rules and other safeguards after delivery.¹⁵ Indeed, the Commission should clarify that agreements exercising the new importation condition to deliver devices to retail locations prior to authorization do not violate the Section 2.803 marketing rules. The current text of Section 2.803(c)(2) may constrain the ability of manufacturers and retailers (as well as others in the distribution chain) to exercise the new importation condition to deliver devices to retail locations while extracting representations and warranties to abide by the Commission's safeguards.¹⁶ If the Commission does not want to add a new subsection to Section 2.803 as the *Notice* suggests, then the agency should expressly clarify that contracts exercising the new condition including delivery to retail partner locations do not constitute marketing pursuant to Section 2.803.

¹⁴ See, e.g., 47 C.F.R. § 2.1204(a)(3).

¹⁵ *Notice* ¶ 47.

¹⁶ 47 C.F.R. § 2.803(c)(2)(i) and (ii) (conditional sales contracts are permitted between manufacturers and wholesalers or retailers provided that *delivery is made contingent* upon compliance with the applicable equipment authorization; a conceptual, developmental, design or pre-production RF device may be offered for sale solely to business, commercial, industrial, scientific or medical users if, among other things, the equipment will comply with the appropriate rules *before delivery* to the buyer or to centers of distribution.) (*emphasis added*).

Reasonable Basis of Belief. Manufacturers will only be able to import RF devices for which they have a reasonable basis to believe authorization will be granted within 30 days of importation. A manufacturer could demonstrate this “reasonable basis” of belief by showing it has delivered devices to an accredited lab or telecommunication certification body for testing prior to importation.¹⁷

Recordkeeping. The *Notice* seeks comment on whether the Commission should adopt additional recordkeeping or reporting requirements. Adopting such requirements is not necessary.¹⁸ As part of its internal tracking processes, Samsung anticipates keeping records of devices imported and delivered for pre-marketing activities. Indeed, manufacturers regularly retain records related to equipment authorization that must be presented to the Commission upon request, for example, during an enforcement proceeding.¹⁹ Any Commission inquiries emanating from the new importation condition can be satisfied by these existing recordkeeping practices. Therefore, a new reporting requirement is unnecessary and would be burdensome, without a benefit.

In short, adopting the new importation condition with a limit that reflects the number of devices needed for product launches matched with appropriate safeguards such as labeling, contractual and legal protections, and a required reasonable basis for belief that authorization is imminent will streamline the time-to-market cycle significantly while maintaining necessary consumer and public safety protections.

¹⁷ *Notice* ¶ 42.

¹⁸ *Id.* at ¶ 48.

¹⁹ *See, e.g.*, 47 C.F.R. § 2.938(f).

III. SAMSUNG SUPPORTS THE PROPOSAL TO MODIFY SECTION 2.803(C)(2) TO PROMOTE INNOVATION IN THE 5G MARKETPLACE.

Conditional sales directly to consumers through a broad conditional sales exemption, paired with appropriate safeguards, will align consumer expectations with experience.²⁰

Expanding the scope of acceptable marketing activities will enable manufacturers to better gauge interest in new product offerings and better serve U.S. consumers.

The remedies described in the *Notice* can adequately mitigate and address any potential harms from expansion of pre-sale marketing activities. For example, the Commission can easily support its longstanding interest in protecting consumer safety by allowing manufacturers to sell new devices to consumers but wait for authorization to deliver them. As the *Notice* recognizes, contemporary American consumers are well-versed in business models that allow pre-sales to gauge demand for new products and require some time before delivery.²¹ A light-touch approach to any additional disclosure and recordkeeping requirements is therefore appropriate given the familiarity of consumers and sellers with pre-sales and existing avenues of consumer protection and relief through the Federal Trade Commission or state attorneys general. Any additional labeling requirements would not be useful as consumers would only receive the physical package after the device has been approved, and any wholesale or retail entities would already be notified in contractual agreements.²² Modifying the equipment authorization rules to allow this common marketing model will enable manufacturers to more easily respond to consumer demand without allowing unauthorized devices into the market.

²⁰ *Notice* ¶ 16.

²¹ *Id.* at ¶ 20.

²² *Id.* at ¶ 22.

IV. CONCLUSION.

To enable Americans to realize the benefits of 5G and next generation wireless technology, the Commission should act swiftly to modernize its equipment authorization rules regarding pre-marketing activities. Establishing new importation conditions to reflect the needs of the modern equipment market will provide manufacturers the time needed to ready devices for sale and afford consumers the opportunity to evaluate products up close before purchase. Allowing conditional sales direct to consumers will also empower manufacturers to gauge interest in new product offerings. As the Commission works to expand access to digital-age opportunity for all, these changes to the equipment authorization rules will help manufacturers better meet consumer demand and expectations.

Samsung appreciates the vital role the Commission plays in facilitating the rollout of new innovative devices to the wireless marketplace and looks forward to continued collaboration to meet the needs of U.S. consumers.

Respectfully submitted,

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